HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITIONS Nos:21079 & 21080 OF 2007

Dated: 06.10.2007

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W.P.NO:21079 OF 2007

Between:

1. The Chief Personnel Officer,
South Central Railway, Rainilayam,
Secunderabad and another.

..**Petitioners**

And

R. Pavan Kumar

..Respondent

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W.P.NO:21080 OF 2007

Between:

1. The Chief Personnel Officer,
South Central Railway, Rainilayam,
Secunderabad and others.

..**Petitioners**

And

P. Nageswara Rao

..Respondent

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HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&

HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITIONS Nos:21079 & 21080 OF 2007

COMMON ORDER: (per Hon'ble Smt. Justice T. Meena Kumari)

Since the issue involved in both the writ petitions is one and the same, both the writ petitions are disposed of by a common order.

W.P.No.21079 & 21080 of 2007 are filed aggrieved by the orders, dated 11.9.2007 passed by the Central Administrative Tribunal in O.A Nos.582 and 583 of 2007 respectively.

The respondents in both the writ petitions are the applicants before the Tribunal. They filed the above O.As seeking to direct the respondents-writ petitioners to accept their voluntary resignation and consequently, to relieve and permit them to join in the respective private companies by paying them the terminal benefits including fixation of pension and costs for unwarranted mental agony caused to them.

The tribunal allowed the respective O.As directing the respondents-writ petitioners to pass appropriate orders within two weeks and relieve them by accepting the voluntary retirement notice to enable them to join in private organization within one week. Having aggrieved by the same, the respondents-authorities filed the present writ petitions.

The learned Counsel appearing for the railways contended that the applicants sought for voluntary retirement from service on the ground of personal reasons whereas for the first time, the applicants contended before the tribunal that their voluntary retirement was to join

in private organizations, in which they secured appointments and these negotiations of the applicants with the private organizations for securing appointment without prior sanction of the Government is violative of Rule 15(b) of the railway Services (Conduct) Rules and apart from that, the applicants have concealed the facts in their voluntary retirement notices as to their bonafide reason and therefore, the department is now contemplating to initiate departmental action, but the orders of the tribunal prevented from proceeding against the applicants. It is further contended that in terms of Rule 67 of Railway services (Pension) Rules 1993, Railway servant after rendering 20 years of qualifying service may by giving notice of not less than 3 months in writing to the appointing authority retire from service and the same shall be subject to acceptance of appointing authority and subject to the other conditions mentioned therein and thus, the precondition for retirement under the Rule is the acceptance to be given by the Competent authority whereas the authority has taken a view not to permit the applicants to retire considering the rail and passenger safety and the installation and maintenance of the signals is very crucial for the safe running of the trains and in a case of this nature, resignation cannot be accepted immediately as time will be taken to make alternative arrangements for filling the posts and therefore, the order of the tribunal without appreciating the difficulties expressed by the railway authorities is against the interest of traveling public and hence, the orders impugned are liable to be set aside.

It is the case of the respondents-applicants that they have

completed 23 years of service in the railways from the date of initial appointment and they sought for voluntary retirement on the ground that they got jobs in private organizations viz., as principle Design Engineer in Infotech and as Signal Engineer in MCML respectively and on receipt of the appointment letters, they submitted their respective representations before the Divisional Railway Manager/Personnel seeking resignation on voluntary grounds, but, their representations were rejected on the ground due to shortage of cadre strength and that, as a matter of fact, there is no shortage of staff and recently, 7 persons were promoted as Junior Engineers to the Post of section Engineer drawing in the same branch in which, the applicants are working. It is also their case that they have to maintain their respective families and the salary being drawn in the railway department is not sufficient to maintain their respective families and that they are eligible for retiring voluntarily by giving 3 months notice and therefore, rejection orders are illegal and violative of principles of natural justice.

Heard the learned Counsel on record and perused the material available on record.

Before going into the merits of the case, it is relevant to examine the rule 15 of Railway services (Conduct) Rules, which reads as follows:

(1) Subject to the provisions of sub-rule (2), no railway servant shall, except with the previous sanction of the Government,

(a) engage directly or indirectly in any trade or business, or

(b) negotiate for, or undertake, any other employment.

Railway Ministry's Decision: 4. No railway servant should negotiate for commercial employment during service without obtaining the prior sanction of the head of the department and such permission should not be given unless there any special reasons for doing so.

Thus, the above provisions make it clear that prior sanction is mandate for the Railway servant to negotiate for commercial employment during service.

Now, coming to the facts of the case on hand, the fact that remains undisputed is that the applicants have neither obtained any prior sanction of the Government nor processed the application through department.

At this stage, it is the contention of the learned Counsel for the applicants that for employment in private organizations, prior sanction of the Government is not necessary. If that being the case, it is not known as to how they could join in a new organization without revealing the bonafide reason and without being relieved from the present working organization. Though the failure to obtain prior sanction, which is mandate as per the rules, is in contravention of the rules, but, it is pertinent to note that it is the contention of the learned Counsel appearing for railways that the railways never denied the right of the respondents to seek voluntary retirement, but only differed such acceptance for the time being till the alternative arrangements are made.

In view of the submission and in the facts and circumstances of the case, We feel that it is for the authorities to exercise discretion either to accept or reject the claim of the applicants considering the

exigency of the administration. In this background of the matter, We have no hesitation to hold that the tribunal is not justified in passing the orders impugned and consequently, the same are liable to be set aside.

Accordingly, the writ petitions are allowed setting aside the orders of the tribunal. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Chandraiah

Date: 6th October, 2007
Nn/Gurc.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:21079 & 21080 OF 2007

(Common Order delivered by the Hon'ble Smt. Justice T. Meena

Kumari)

Dated: 06.10.2007

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